

REMARKS

A. Response to Notice of Non-Complaint Amendment

Applicant has submitted a revised statement of the claims including claim 17, which was inadvertently omitted from the previous statement.

B. Allowed and Allowable Claims

Claims 18 and 19 have been allowed. Claim 20 has been objected to as being dependent upon a rejected base claim but has been said to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has canceled claim 20 and presented new claim 21 which includes all of the limitations of claim 20 and its base claim in independent form. Applicant also has amended claim 18 to correct a minor typographical error.

C. Rejected Claims

Claims 5-7, 9-12, and 14-17 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,457,898 to Fortin *et al.* (“Fortin *et al.*”). Applicant has canceled claim 17. Applicant traverses the rejections of claims 5-7, 9-12, and 14-16 for the reasons stated below.

The examiner has stated that Fortin *et al.* discloses a shoe comprising a sole 12, a toe cap 15, an upper 14, and a metatarsal guard 11 with a convex arch/instep portion, and a right and complementary left leg. The examiner has regarded the metatarsal guard of Fortin *et al.* as being formed from a single layer, stating “The fact that the single layer is folded over itself does not necessarily make it a plurality of layers, it is merely made from a single layer which is folded.” The examiner therefore has contended that this meets the language of the claims which recite a convex arch comprising a single layer.

A proper claim rejection under 35 U.S.C. §102(b) requires that each and every element of the claimed invention be shown or taught in the cited reference. It does not appear that this requirement has been met with respect to claims 5-7, 9-12, and 14-16.

Fortin *et al.* does not show or teach all of the element of independent claim 14 as presented herein. The portion of the Fortin *et al.* metatarsal guard over a wearer's instep comprises a first thickness comprising a plurality of longitudinal slits 20 that define a plurality of tongues 21. The central tongue 21' comprises an extension that forms flap 22, which is folded at its distal end to form a second thickness covering the tongues 21. [Col. 3, lines 29-36; Fig. 1.]

The convex arch portion of Fortin *et al.* therefore comprises more than one thickness of material

Nothing in Fortin *et al.* shows or teaches a convex arch portion comprising a single thickness of material over a wearer's instep. To the contrary, Fortin *et al.* teaches that flap 22, which is formed from the second thickness of material, is required to distribute the load on tongues 21 upon impact by a falling object; it compensates for the weakness of the tongues 21 while allowing movement of the tongues 21 in response to movement of a wearer's foot. [Col. 3, lines 29-30 and 39-41.]

Claims 5-7, 9-12, 15, and 16 each is dependent on independent claim 14. Applicant respectfully submits that these claims are allowable at least for the reasons stated with respect to claim 14.

Fortin *et al.* does not show or teach each and every limitation of claims 5-7 and 9-12, and 14-16 at least for the reasons stated above. Because Fortin *et al.* does not anticipate these claims, applicant requests that this ground for claim rejection be withdrawn.

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CONCLUSION

Applicant respectfully submits that all of the claims presented satisfy the statutory requirements for patentability and are patentable over the cited reference. Accordingly, applicant submits that the claims are in condition for allowance and requests that a Notice of Allowance be issued.

Respectfully submitted,

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